

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE SOUTHERN NEW ENGLAND  
TELEPHONE COMPANY,

Plaintiff

v.

GLOBAL NAPS, INC., ET AL.,  
Defendants.

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CIVIL ACTION NO.  
3:04-cv-2075 (JCH)

OCTOBER 14, 2008

**RULING ON DEFENDANT'S MOTION TO STAY EXECUTION  
OF JUDGMENT PENDING APPEAL**

**I. INTRODUCTION**

Defendants, Global NAPs, Inc., Global NAPs New Hampshire, Inc., Global NAPs Networks, Inc., Global NAPs Realty, Inc., and Ferrous Miner Holdings, Ltd. (collectively, "defendants"), bring the present Motion to Stay Execution of Judgment Pending Appeal [Doc. No. 845], in which they move the court to stay enforcement of the July 7, 2008 Default Judgment and the July 9, 2008 Amended Default Judgment pending appeal. Defendants ask the court to grant this Motion without requiring a bond or any other security. Plaintiff, The Southern New England Telephone Company ("SNET"), objects, arguing that the defendants have not made the requisite showing for granting a stay without security.

For the reasons indicated below, the defendants' Motion to Stay Execution of Judgment Pending Appeal [Doc. No. 845] is **DENIED**.

**II. BACKGROUND**

The court assumes familiarity with the basic underlying facts of the case and will recite only the relevant recent procedural history. On July 7, 2008, the court entered a Default Judgment against defendants in the amount of \$5,247,781.45 and awarded

fees and costs of \$645,760.41 [Doc. No. 796]. On July 9, 2008, the court entered an Amended Default Judgment [Doc. No. 806] in order to correct the corporate name of one defendant. Defendants subsequently filed Motions for Reconsideration [Doc. Nos. 807, 808] of the rulings on which the Default Judgments were based, as well as Motions to Alter or Amend the Default Judgments [Doc. Nos. 809, 810]. The court denied these Motions on September 3, 2008 [Doc. No. 840]. Defendants timely filed a Notice of Appeal on September 12, 2008.

### III. STANDARD OF REVIEW

Fed. R. Civ. P. 62(d) states that, “if an appeal is taken [from a judgment], the appellant may obtain a stay by supersedeas bond . . . . The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.”

As a general rule, posting of a sufficient bond is required in order to obtain a stay of a money judgment pending appeal. This “reflects the federal policy of providing a judgment creditor with security during the pendency of an appeal.” FDIC v. Ann-High Assocs., 129 F.3d 113 (2d Cir. 1997). In certain circumstances, however, a district court may, in its discretion, grant a stay without requiring a bond. As the Second Circuit has noted, a stay without a bond is appropriate “if the appellant provides an acceptable alternative means of securing the judgment.” Id. This view is in keeping with the Supreme Court’s instruction that, “[i]n the event a stay is entered pending appeal, the [Federal Rules of Civil Procedure] require the district court to ensure that the judgment creditor’s position is secured, ordinarily by a supersedeas bond.” Peacock v. Thomas, 516 U.S. 349, 359 (U.S. 1996).

In assessing a motion for a stay without a bond, the court considers: 1) whether the petitioner is likely to prevail on the merits of his appeal; 2) whether, without a stay, the petitioner will be irreparably injured; 3) whether issuance of a stay will substantially harm other parties interested in the proceedings; and 4) wherein lies the public interest. De la Fuente v. DCI Telecomms., Inc., 269 F. Supp. 2d 237, 240 (S.D.N.Y. 2003) (citing Hilton v. Braunskill, 481 U.S. 770, 777 (1987)). Further, the defendants, as the parties seeking a stay without a bond, have the burden of providing specific reasons why the court should depart from the bond requirement. See De la Fuente, 269 F. Supp. 2d at 240.

#### **IV. DISCUSSION**

In their Memorandum in Support, defendants devote nearly six pages to the argument that the court should grant a stay because they are likely to succeed on the merits of their appeal. Memorandum in Support of Motion to Stay Execution of Judgment Pending Appeal (“Memo. in Support”) at 4-9. Specifically, they contend that they will prevail on the issue of subject matter jurisdiction because this court lacks the power to “adjudicate Interconnection Agreement disputes that have not been presented to the appropriate state regulatory commission”. Id. at 5.

For the purposes of the instant Motion, the question of whether defendants are likely to prevail on appeal is merely one prong of the analysis. Because the defendants have failed to carry their burden on the other prongs, as will be discussed below, the court will not belabor the jurisdictional issues. It will suffice to say that the court stands

by its earlier rulings.<sup>1</sup>

As for the second prong of the analysis, the defendants have failed to show that they will be irreparably injured absent a stay. The defendants aver that their business is now a “cash in, cash out” business, and that if SNET is permitted to levy on the business’s accounts, the business will be unable to continue. In support of these arguments, defendants point to the Declarations offered by Frank Gangi and Janet Lima (Doc. No. 814, Exh. A & B).

The court gives little weight to the conclusory Declarations of Gangi and Lima. Defendants have offered no objective information to support these declarations, such as thorough financial records, detailed asset statements, or complete tax returns. Given the history of the case and SNET’s allegations of defendants’ impropriety, without objective evidence the court cannot find that defendants have met the burden of demonstrating irreparable injury absent a stay.

Regarding the third and fourth prongs, the court rejects defendant’s arguments that issuance of a stay will not harm SNET and that the public interest clearly favors a stay. To begin, SNET has, in its opposition to the present motion, raised genuine issues concerning the defendants’ characterization of their financial situation. See, e.g., Plaintiff’s Opposition to Defendants’ Motion to Stay Execution of Judgment Pending Appeal (“Plaintiff’s Opp.”) at 5-9. Moreover, the very behavior on the part of the defendants that led to the entry of default judgment casts doubt on the defendants’

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<sup>1</sup>The court has previously addressed, at length, the subject matter jurisdiction issues in this case, and it is not necessary to repeat those findings and rulings here. See, e.g., Ruling Denying Motion to Dismiss [Doc. No. 38].

willingness to abide by the orders of this court and respect the tenets of our legal process. Consequently, in the absence of a sufficient showing by the defendants, the court will not accept their bald reassurances that the issuance of a stay will not harm SNET, especially in the light of SNET's vehement assertions to the contrary.

Similarly, defendants' assertion that the public interest favors a stay is premised upon defendants' unsupported characterization of their business as near insolvent. That is, defendants argue that the public interest favors a stay because posting a bond will "destroy Defendants' business," leaving customers with one less choice in telecommunications providers and leading to a loss of jobs, increase of benefit claims, and loss of tax revenue. Memo. in Support at 14. As previously noted, however, defendants have offered no objective evidence upon which to find that requiring a bond will necessarily lead to business failure, and without such evidence their public interest argument is unconvincing.

Finally, it bears noting that, beyond the four prong analysis, defendants have not satisfied their burden of demonstrating their proposed alternative to a bond is appropriate and sufficient to protect SNET's interests. Specifically, in place of a bond, the defendants propose to "retain any revenues in excess of amounts needed to pay operating expenses . . . , legal expenses, taxes, and other routine expenses." Memo. in Support at 1-2. This proposal is curious, however, given the defendants' earlier assertions that their business now operates on a "cash in, cash out" basis and sometimes "only break[s] even." *Id.* at 13. If the court were to take such assertions at face value – which, as described above, it will not do – it appears that the defendants are pledging to retain nothing to secure SNET. Such a proposal guarantees SNET

nothing, and cannot be entertained as a serious alternative to a surety bond for the full judgment amount, as envisioned by the Federal Rules of Civil Procedure.

**V. CONCLUSION**

For the foregoing reasons, the defendants' Motion to Stay Execution of Judgment Pending Appeal [Doc. No. 845] is **DENIED**.

**SO ORDERED.**

Dated at Bridgeport, Connecticut this 14th day of October, 2008.

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/s/ Janet C. Hall  
Janet C. Hall  
United States District Judge